



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 14, 1997

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704

OR97-0061

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 104073 and ID# 104469.

The Texas Workers' Compensation Commission (the "commission") received one request, ID# 104073, for "[a]ll documents already made public through OR96-481" issued by this office. The requestor states that these documents should include:

1. The total number of all sexual harassment and discrimination complaints filed at the agency between the dates of January 1, 1990 and January 1, 1996 as well as other related information.
2. To be included with the sexual harassment and discrimination complaints are the names of the complainant(s) [sic] and accused person(s); the dates and places of each alleged harassment and discrimination occur[r]ence; what occur[r]ed in each case and the action taken on each of the complaints.

This request is identical to the request in Open Records Letter No. 96-0481 (1996). You assert the same arguments as you did in Open Records Letter Nos. 96-0481 (1996) and 96-1914 (1996);¹ that is, the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. In addition, you ask us to reconcile the earlier two letter rulings and

¹In Open Records Letter No. 96-1914 (1996), the commission received a request for all records or complaints of sexual harassment between 1992 and 1996, including any pending or settled litigation.

Government Code. In addition, you ask us to reconcile the earlier two letter rulings and clarify "which documents must be redacted and released to the requestor, the entire files or only the redacted documents labeled 'Memorandum.'" Your second request, ID# 104469, concerns the same records and exceptions. We will consider these two requests together. You have submitted a representative sample of the documents at issue and informed us that the documents are similar or identical to those submitted for review in response to the two earlier requests for opinions which resulted in Open Records Letter No. 96-0481 (1996) and Open Records Letter No. 96-1914 (1996).² We have considered the exceptions you claim and reviewed the documents at issue.

As this office has previously issued a decision regarding the requested documents in Open Records Letter No. 96-0481 (1996), we will adhere to that decision.³ However, we will clarify the ruling and our analysis of the section 552.101 exception in light of your request for clarification and reconciliation of the ruling with Open Records Letter No. 96-1914 (1996).

In Open Records Letter No. 96-0481 (1996), we concluded that to the extent the documents contain the identities of witnesses or victims in sexual harassment matters, the identities are excepted under common-law privacy as incorporated by section 552.101. We further concluded that the remaining portions of the marked documents you submitted do not contain information that is of a highly intimate or embarrassing nature about a person's private affairs. Instead, the information relates to actions of public employees and matters of public business, and as such, is of legitimate public interest. Therefore, we decided that, excluding the documents we have marked, the documents cannot be withheld under section 552.101.

In Open Records Letter No. 96-1914 (1996), we concluded that based on *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the commission must withhold the files investigating complaints of sexual harassment except for the documents labeled "Memorandum" which contain two sections titled "Investigation Summary" and "Summary of Findings." In addition, we stated that

[t]hese documents provide an adequate summary of the investigation into the alleged sexual harassment. These documents, however, would serve to identify the victim

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As Open Records Letter No. 96-0481 (1996) was issued in April 1996, those documents should have already been released to the requestor. See Gov't Code § 552.353.

and the individual witnesses of the alleged sexual harassment. . . . Since the identity of the victim and the witnesses to the alleged sexual harassment is protected by the common-law privacy doctrine as applied in *Ellen* . . . , the names of these individuals must be withheld. However, we find that the public interest in the statement and the identity of the alleged harasser outweighs any privacy interest he may have in that information. Therefore, the commission may not withhold this information under section 552.101.

In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

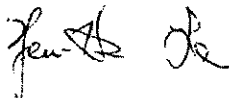
In addressing your concerns, we initially note that the ruling in Open Records Letter No. 96-0481 (1996) was based on marked documents that were submitted for review at that time. We cannot determine now what those marked documents were and whether they differ from the submitted documents in the present request. From our review of Open Records Letter No. 96-0481 (1996), it appears that the records submitted at that time did not contain adequate summaries of the sexual harassment investigations. Therefore, we concluded that the documents must be released with the identities of victims and witnesses redacted. However, the records we have before us now include documents in the investigation files labeled "Memorandum," which contain two sections titled "Investigative Summary" and "Investigative Findings." These are adequate summaries of the investigations into alleged sexual harassment and must be disclosed pursuant to *Ellen*, 840 S.W.2d at 525. However, the identities of the victims and witnesses to the alleged sexual harassment are protected by the common-law privacy doctrine and must be withheld. *Id.* Contrarily, the public interest in the statement and the identity of the alleged harasser outweighs any privacy interest he may have in that information; therefore, the commission may not withhold this information under section 552.101. The public has no legitimate interest in the details of the victims' and witnesses' personal statements, and they may not be disclosed. *Id.* In conclusion, when there is an adequate summary of the investigation, the summary must be released, but identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. When no adequate summary exists, detailed statements regarding the allegations must be released, but identities of witnesses and victims must still be redacted from the statements.

The remainder of the documents in the investigation files, excluding those which we have already addressed under other exceptions in Open Records Letter No. 96-0481 (1996), consist of documents for which you claim no exceptions and, therefore, must be released; or they are documents which relate to actions of public employees and matters of public business and as such is of legitimate public interest. *See, e.g.*, Open Records Decision No. 444 (1986) at 4 (legitimate public interest in information relating to public employees). Additionally, the information is not of a highly intimate or embarrassing nature about a person's private affairs. Therefore, the commission may not withhold the remaining documents under section 552.101. We reiterate that the identities of victims and witnesses to alleged sexual harassment must be redacted from any such documents prior to their release. We have marked such documents that must be released.

Finally, we note that although you do not make an argument in your brief, you have marked one of the documents, a college transcript, as excepted from disclosure under section 552.102. Section 552.102(b) excepts from public disclosure a transcript from an institution of higher education maintained in the personnel file of a professional public school employee. Because the individual named in the transcript is an internal auditor for the commission and not a professional public school employee, section 552.102(b) is inapplicable.

With the above clarification, we adhere to our ruling in Open Records Letter No. 96-481 (1996). We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in these requests and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 104073 and ID# 104469

Enclosures: Marked documents

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